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Single Bench

BEFORE THE HONOURABLE HIGH COURT OF CHHATTISGARH

AT BILASPUR

SECOND APPEAL NO. 266 OF 2006

APPELLANT : Ankalu Son of Late Suklal; aged about 60 years; Farmer and resident of Village Kubradeeh; Post Chichola; Tahsil and District Rajnandgaon (C.G.).

PLAINTIFF

P.R. No. 1652 dt. 6
Presented by Shri Manoj Shrivastava
dated 15/6/06

VERSUS

RESPONDENTS : 1. Govind Son of Late Suklal; aged about 65 years;

DEFENDANTS

2. Rajau Son of Late Dularu Satnami; aged about 50 years;

Both resident of Village Raanitalab, P.H. NO. 38; Post Chichola; Tahsil and District Rajnandgaon (C.G.).

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3. Puniya Bai Wife of Late Siyaram; aged about 50 years; Farmer and resident of Village Kubradeeh; Post Chichola; Tahsil and District Rajnandgaon (C.G.).

4. State of Chhattisgarh; Through: The Collector; Rajnandgaon (C.G.).

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A. 266/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

04/09/2006

Shri R.N. Jha, learned counsel for the appellant.

Heard on the question of admission.

The appellant has preferred this second appeal U/s 100 of the Code of Civil Procedure against the judgment and decree dated 30/3/2006 passed passed by District Judge Rajnandgaon in civil appeal No. 1-A/2005 by which the appeal preferred by the appellant against the judgment and decree dated 27/12/2004 passed by the learned Civil Judge Class-I Rajnandgaon has been dismissed.

Appellant/plaintiff filed a civil suit for declaration that the sale deed executed by the defendant No.1 in favour of defendant No. 2 is not binding upon him, and for perpetual injunction which has been dismissed by both the courts below with a finding that the plaintiff has failed to prove the suit land to be the ancestral property and as such the plaintiff has not proved his title over such property and accordingly the sale deed in question is binding upon him and with a further finding that the plaintiff is not in possession of the suit land.

Learned counsel for the appellant submits that both the courts below have arrived at the conclusion that the plaintiff has failed to prove that the land in question was ancestral property though the same was purchased in the name of defendant No.1 by late Suklal. Referring to the documents of Ex. P/1, P/2 & P/3 being the sale deeds executed in favour of Govindram on 20/5/1963, sale deed executed by Suklal dated 8/4/64 in favour of Chamru, sale deed dated 31/1/64 executed by Suklal in favour of Bhagoli and sale deed dated 31/1/64 executed by Suklal in favour of Shriram, it is argued that a bare perusal of these

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -२-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

documents goes to show that to repay the outstanding amount of consideration against the sale deed of Ex. P/1, P/2 & P/3 were subsequently executed by Suklal and this aspect has not been considered by both the courts below.

It is further submitted the defendants have not been able to establish that the defendant No. 1 Govindram purchased the land in question out of his personal earnings and that Govindram has categorically denied this fact in his deposition before the courts below and thus it is submitted that the following substantial questions of law arise for adjudication of this appeal.

A. Whether; in the facts and circumstances; the judgment and decree of Learned Judge of First Appellant Court; confirming the judgment and decree of Learned Court Trial Court declaring the suit land to be self acquired land of defendant No.1 is justified whereas separate earning or self acquisition by defendant No.1 has not been established by documentary or oral evidence.?

B. Whether; in the facts and circumstances; the judgment and decree of Learned Judge of Courts below are justified; holding the suit land to be self acquired land of defendant No:1; whereas "NUCLEAUS" i.e. paternal property stood in existence; which was transferred later to pay the credited consideration for earlier purchase of suit land?

I have heard learned counsel for the appellant.

Counsel for the appellant does not dispute that the sale deed of Ex. P/1 was executed in favour of defendant No.1 in the year 1963 and in the above sale deed there was no stipulation that consideration against the sale deed remains unpaid or the same is subsequently paid to the defendant No.1. It is

D.

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मामला क्रमांक SA. 266/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

also not disputed that subsequent sale deeds of Ex. P/2, P/3 & P/4 do not mention that the same were executed with a view to discharge the loan arising due to earlier purchase by Ex. P/1. Even otherwise the defendant No.1 who is the brother of the plaintiff in his written statement has claimed that he purchased the land in the year 1963 from his personal earnings though subsequently this defendant tried to resile from his earlier stand and prayed for substituting earlier written statement with a new one but the same was rejected by the trial court as by that the defendant No.1 tried to retract his earlier admission. Both the courts below on the basis of the pleadings of the respective parties, oral evidence and the documents produced by the respective parties have recorded a concurrent finding of fact that by document of Ex. P/1, defendant purchased the land and subsequently he sold it to the defendant No.2 for valid consideration and thereafter on the strength of subsequently executed sale deed the defendant No.2 is in possession of the suit land.

In view of the aforesaid analyses I am of the opinion that the findings recorded by the courts below are finding of fact and they have been arrived at after proper appreciation of oral and documentary evidence available on record and there is no substantial question of law involved for adjudication of this appeal.

Accordingly this appeal has no merit and the same is liable to be dismissed. The same is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

P.T.O.